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Analysis of Enrolled Senate Bill 751

Topic: Summer Resort Corporations
Sponsor: Senator Allen
Co-Sponsors: Senators Bishop, Goschka, and Birkholz
Committee: Senate Commerce and Labor
House Commerce

Date Introduced: September 13, 2005

Date Enrolled:

Date of Analysis: January 31, 2006

Position: The Department of Labor & Economic Growth supports the bill.

Problem/Background: Public Act 137 of 1929 provides for the creation of summer resort associations. According to the Corporations Division of the Department of Labor & Economic Growth, there are 124 organizations incorporated under the act.

The bill was introduced on behalf of the Long Lake Peninsula Association in Grand Traverse County and attempts to clear up a problem dealing with the lack of definition of "majority" in Section 19 of the act. There is an informal letter opinion from Attorney General Kelly from 1970 that interpreted majority to mean a majority of votes cast. Long Lake has been using the 1970 Kelly opinion as a basis for assessing dues. Recently, Attorney General Cox issued a formal opinion (#7164) that ruled that "majority" is a majority of the corporation's members. This has created confusion. The bill is intended to codify the more stringent Cox ruling into law, but give some local control if a corporation wants to allow for dues changes by a majority of those voting. Apparently, the corporation in our district has been running into problems in getting 50% plus 1 person to show up and vote on an issue. For example, if a 100 person corporation only has 49 people show up to vote, all voting yes, they still can't get anything done because of those who are indifferent or choose not to vote.

Description of Bill: The bill amends Section 19 of Public Act 137 of 1929 to allow summer resort associations to adopt a bylaw that allows for a majority of votes cast to approve dues and assessments. The bill contains an enacting section stating that it is the Legislature's intent to reconcile conflicting Attorney General opinions and to ratify AG Opinion No. 7164 (2004).

Summary of Arguments

Pro: The bill will help clear up confusion created by two conflicting Attorney General opinions and will allow summer resort corporations some flexibility in handling decisions relating to assessments and dues.

Con: There may be much more complex legal issues involved here that the bill does not address. In *Whitman v Lake Diane Corp.* 267 Mich App 176 (2005) the Michigan Court of Appeals held that several provisions of Public Act 137 of 1929 were unconstitutionally vague. This decision refers to another case, *Baldwin v North Shore Estates Association*, 384 Mich 42(1970), which found other provisions in the act related to voting to be unconstitutional. It is unclear whether the bill will create more legal confusion by enacting a new scheme for approving dues and assessments without addressing the underlying constitutionality issues related to voting identified by the court in these cases.

Fiscal/Economic Impact

(a) **Department:** The bill will have no fiscal impact on the department.

(b) **State:** The bill will have no fiscal impact on the state.

(c) **Local Government:** The bill will have no impact on local governments.

Other State Departments: The bill will have no effect on other state departments.

Any Other Pertinent Information: None.

Administrative Rules Impact: The bill will have no administrative rules impact.